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Harabedian Paving Company, and its Alter Ego/Single Employer/Successor and Harpo Company, Inc.¹ and Fringe Benefit Funds, Local 324, International Union of Operating Engineers, AFL-CIO. Case 7-CA-35228

March 28, 1997

SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS FOX AND HIGGINS

On April 14, 1994, the National Labor Relations Board issued a Decision and Order,² *inter alia*, ordering Harabedian Paving Company, its officers, agents, successors, and assigns, to make the unit employees whole for its failure to make contractually required fringe benefit fund contributions since May 17, 1993, by making all such delinquent contributions and reimbursing the employees for any expenses ensuing from its failure to do so. On November, 9, 1994, the United States Court of Appeals for the Sixth Circuit entered its judgment enforcing the Board's Order.

A controversy having arisen over the liability of Respondent Harabedian and an additional company, Harpo Company, Inc., with respect to the amounts due under the Board's enforced order, on January 6, 1997, the Regional Director for Region 7 issued an amended compliance specification and notice of hearing against the Respondents alleging the amounts due under the Board's Order, and notifying the Respondents that they should file a timely answer complying with the Board's Rules and Regulations. Although the Respondents initially filed an answer to the amended compliance specification, they subsequently withdrew their answer by letter dated February 11, 1997.

On February 24, 1997, the General Counsel filed with the Board a Motion for Default Summary Judgment, with exhibits attached. On February 25, 1997, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondents filed no response. The allegations in the motion and in the amended compliance specification are therefore undisputed.

¹ Harpo Company, Inc. is the additional Respondent responsible for the purpose of achieving compliance with the terms of the Board's Order.

² 313 NLRB 1079.

Ruling on the Motion for Default Summary Judgment

Section 102.56(a) of the Board's Rules and Regulations provides that the Respondent shall file an answer within 21 days from service of a compliance specification. Section 102.56(c) of the Board's Rules and Regulations states:

If the respondent fails to file any answer to the specification within the time prescribed by this section, the Board may, either with or without taking evidence in support of the allegations of the specification and without further notice to the respondent, find the specification to be true and enter such order as may be appropriate.

According to the uncontroverted allegations of the Motion for Default Summary Judgment, although the Respondents initially filed an answer to the amended compliance specification, they subsequently withdrew their answer. Such a withdrawal has the same effect as the failure to file an answer, i.e., the allegations in the amended compliance specification are deemed admitted. See *Maislin Transport*, 274 NLRB 529 (1985). Accordingly, we deem the allegations in the amended compliance specification to be admitted as true, and grant the General Counsel's Motion for Default Summary Judgment. We therefore conclude that the amounts due for the period covered by the amended compliance specification are as stated therein,³ and we will order payment by the Respondents of those amounts, plus interest accrued on the amounts to the date of payment.

FINDINGS OF FACT

At all material times, George Harabedian has been president and a major stockholder of Respondent Harabedian and George Bradley Harabedian Jr. has been vice president and a major stockholder of Respondent Harabedian.

Respondent Harpo was incorporated on October 14, 1993. From October 14, 1993, until June 13, 1996, George Harabedian was the majority owner of Respondent Harpo, and since June 13, 1996, George Bradley Harabedian Jr. has been the majority owner of Respondent Harpo.

In about spring 1994, George Harabedian and George Bradley Harabedian Jr. caused Respondent Harpo to take over and continue to operate the busi-

³ The compliance specification only appears to cover the last three quarters in 1993. The specification also alleges that since spring 1994 Respondent Harpo has failed to make any contractually required payments to the fringe benefit funds and that the Respondents are also obligated to make such contributions, including liquidated damages, for employees employed since that time. However, the specification does not set forth the amounts due for that period.

ness of Respondent Harabedian in essentially unchanged form and as a disguised continuance of Respondent Harabedian.

At all material times, Respondent Harabedian and Respondent Harpo have been business enterprises having common ownership, common officers, common management and supervision, common business purpose, operation and customers, overlapping common premises and facilities, interchange of personnel, common labor relations policies and have variously held themselves out to the public as a single enterprise.

Based on the conduct described above, Respondent Harabedian and Respondent Harpo are alter egos and a single employer within the meaning of the Act and are liable, jointly and severally, to remedy the unfair labor practices of Respondent Harabedian. Based on the conduct and operations described above, Respondent Harpo continued as the employing entity with notice of the potential liability of Respondent Harabedian to remedy its unfair labor practices and is a successor to Respondent Harabedian.

ORDER

The National Labor Relations Board orders that the Respondents, Harabedian Paving Company and Harpo Company, Inc., Troy, Michigan, their officers, agents, successors, and assigns, shall make whole the unit employees by paying the amounts listed below, plus interest on the amounts due for employee expenses⁴ and any additional amounts due the funds as set forth in the agreement.⁵

⁴ See *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

⁵ See *Merryweather Optical Co.*, 240 NLRB 1213, 1216 fn. 7 (1979).

Health Care Fund:	\$13,438.53
Pension Fund:	12,302.88
Retiree Benefit Fund:	757.10
Vacation Fund:	9,026.40
Supplemental Vacation Fund:	75.71
Apprentice Fund:	567.83
Advancement	
Promotion Fund:	227.13
Labor Management Fund:	264.99
Liquidated Damages:	3,666.06
TOTAL CONTRIBUTIONS AND LIQUIDATED DAMAGES:	
	40,326.63
Richard Ortwine:	867.66
TOTAL DUE:	\$41,194.29
Dated, Washington, D.C. March 28, 1997	

William B. Gould IV,	Chairman
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Sarah M. Fox,	Member
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John E. Higgins, Jr.,	Member
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